

RECORDATION NO. 21550-L FILED

DEC 21 '07

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OF COUNSEL
URBAN A. LESTER

SURFACE TRANSPORTATION BOARD

December 21, 2007

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Re: BC Rail Partnership

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of an Assignment and Assumption Agreement, dated as of December 21, 2007, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the documents previously filed with the Board under Recordation Number 21550.

The names and addresses of the parties to the enclosed document are:

Seller Assignor: The Clearwater Partnership, LLP
c/o Revival Leasing Limited
Queensgate House
P O Box 1093 GT
South Church Street
Grand Cayman
Cayman Islands

Buyer/Assignee: Babcock & Brown Rail Funding LLC
885 Second Avenue, 49th Floor
New York, NY 10017

Mr. Vernon A. Williams
December 21, 2007
Page 2

Head Lessee: North America Rail Leasing #3 LLC
(d/b/a Babcock & Brown Rail Leasing)
885 Second Avenue, 49th Floor
New York, NY 10017

A description of the railroad equipment covered by the enclosed document is:

47 flat cars within the series BCOL 873600 - BCOL 873649 as more particularly set forth in the equipment schedule attached to the document.

A short summary of the document to appear in the index is:

Assignment and Assumption Agreement.

Also enclosed is a check in the amount of \$35.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/sem
Enclosures

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SURFACE TRANSPORTATION BOARD

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement dated as of December 21, 2007 (this "Agreement"), is between The Clearwater Partnership, LLP, a Delaware limited liability partnership (the "Seller"), North America Rail Leasing #3 LLC (the "Head Lessee") and Babcock & Brown Rail Funding LLC, a Delaware limited liability company (the "Buyer"). Capitalized terms used herein without definition shall have the meanings ascribed thereto in the Purchase Agreement (defined below), which also contains rules of usage that apply to terms defined therein and herein.

RECITALS:

- A. The Seller is the owner of the railcars described on Exhibit A hereto (the "Equipment").
- B. Concurrently herewith, the Seller and the Buyer have executed and delivered the Purchase Agreement [Clearwater/BBRF] dated as of the date hereof (as amended, modified or supplemented, the "Purchase Agreement") in respect of the Equipment.
- C. The Purchase Agreement contemplates the execution and delivery of this Agreement by the Seller, the Head Lessee and the Buyer on the date hereof.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows.

1. Assignment. Effective as to each item of Equipment from and after the date hereof, pursuant to Section 11 of the Head Lease the Seller directs the Head Lessee to assign, transfer and convey to the Buyer, and each of the Seller and the Head Lessee, respectively, hereby assigns, transfers and conveys to the Buyer all of the Seller's and the Head Lessee's respective rights, title and interest, except as reserved under Section 2.1 of the Purchase Agreement, in and to such item of Equipment and assigns to the Buyer all of the Seller's and the Head Lessee's respective rights and obligations, except to the extent constituting Existing Obligations, under each of the agreements listed on Exhibit A hereto as they relate to the applicable Equipment and all of the other agreements and documents listed in Schedule 1 to the Purchase Agreement (collectively, the "Assigned Operative Agreements").

Notwithstanding the foregoing, each of the Seller, and the Head Lessee and the Buyer shall continue to be entitled to the benefit of any applicable rights to indemnification for tax and other matters which arose or may arise from or be related to any event or circumstance occurring or in existence prior to the date hereof, as specified in the Purchase Agreement.

2. Acceptance of Assignment; Effect of Assignment. The Buyer accepts the assignment contained in Section 1 and agrees to be bound to the same extent as the Seller and the

Head Lessee by all the terms of the Assigned Operative Agreements. Effective on and after the date hereof, after giving effect to the transaction described herein, the Buyer shall be deemed to stand in the place of the Seller for all purposes under the applicable Assigned Operative Agreements and each reference in the Assigned Operative Agreements to the Seller shall be deemed to mean the Buyer.

3. Amendments. No provision of this Agreement may be amended, modified or waived except by written agreement duly executed by each of the parties hereto.

4. Notices. All notices, requests or other communications to or upon any party hereto in connection herewith shall be given in the manner prescribed by Section 9.5 of the Purchase Agreement.

5. Headings. The section headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any provision hereof.

6. Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

7. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the conflict of law rules thereof, other than Section 5-1401 of the New York General Obligations Law.

8. Recordation. The Buyer and the Seller agree to record this Agreement with the Surface Transportation Board and with the Registrar General of Canada, if applicable, to evidence the assignment by the Seller to the Buyer of the Seller's rights under the Lease, if and only if the Lease has been recorded with the Surface Transportation Board and/or the Registrar General of Canada, as the case may be.

9. Further Assurances. Each of the parties hereto covenants and agrees that, at any time and from time to time after the date hereof, at the request and expense of the requesting party hereto, it will promptly and duly execute and deliver, or cause to be executed and delivered, to the requesting party all such further instruments and take all such further action as may be reasonably requested by such party to more effectively sell, transfer, assign, and convey each item of Equipment.

10. Binding Agreement. This Agreement shall be binding upon the Seller and the Buyer, their respective successors and permitted assigns, for the use and purposes set forth and referred to herein, effective as of the date hereof.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been duly executed by the parties hereto as of the date first above written.

THE CLEARWATER PARTNERSHIP, LLP, as
Seller

By: Lloyds TSB Equipment Leasing (No. 5)
Limited, its General Partner

By: Richard Barker
Name: RICHARD BARKER
Title: SOLICITOR

NORTH AMERICA RAIL LEASING #3 LLC, as
Head Lessee

By: _____
Name: _____
Title: _____

BABCOCK & BROWN RAIL FUNDING LLC, as
Buyer

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been duly executed by the parties hereto as of the date first above written.

THE CLEARWATER PARTNERSHIP, LLP, as
Seller

By: Lloyds TSB Equipment Leasing (No. 5)
Limited, its General Partner

By: _____
Name:
Title:

NORTH AMERICA RAIL LEASING #3 LLC, as
Head Lessee

By: 
Name: Larry Littlefield
Title: Vice President

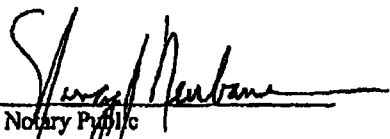
BABCOCK & BROWN RAIL FUNDING LLC, as
Buyer

By: 
Name: Larry Littlefield
Title: Vice President

State of New York)
County of New York)

On this, the 11th day of December, 2007, before me, a Notary Public in and for said County and State, personally appeared Richard Barker, the attorney of The Clearwater Partnership, LLP, who acknowledged himself/~~herself~~ to be a duly authorized person of The Clearwater Partnership, LLP, and that, as such duly authorized person, being authorized to do so, he/she executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Name: 
Notary Public
My Commission Expires: 04/10/2011
Residing in: New York, NY

NANCY J. NEUBAUER
Notary Public, State of New York
No. 01NE5041802
Qualified in New York County
Commission Expires April 10, 2011

State of New York)
)
County of New York)

On this, the 11th day of December, 2007, before me, a Notary Public in and for said County and State, personally appeared Larry Littenfeld, the Vice President of Babcock & Brown Rail Funding LLC, who acknowledged himself/herself to be a duly authorized officer of Babcock & Brown Rail Funding LLC, and that, as such officer, being authorized to do so, ~~he~~ she executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Name: Clementina Capasso
Notary Public
My Commission Expires: **CLEMENTINA CAPASSO**
NOTARY PUBLIC, STATE OF NEW YORK
No. 01CA6120806
QUALIFIED IN NEW YORK COUNTY
Residing in: MY COMMISSION EXPIRES DEC. 27, 2008

State of New York)
County of New York)

On this, the 11th day of December, 2007, before me, a Notary Public in and for said County and State, personally appeared Larry Littlefield, the Vice President of North America Rail Leasing #3 LLC, who acknowledged himself/herself to be a duly authorized officer of North America Rail Leasing #3 LLC, and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Name: Clementina Capasso
Notary Public
CLEMENTINA CAPASSO
My Commission Expires: NOTARY PUBLIC, STATE OF NEW YORK
NO. 01CAB120808
Residing in: QUALIFIED IN NEW YORK COUNTY
MY COMMISSION EXPIRES DEC-27, 2008

Exhibit A
(to Assignment
and Assumption Agreement)

EQUIPMENT AND LEASES

Lease #	Lessee	# of Units	Year Built/ Manufacturer	Description	Reporting Marks	Casualty Marks
1	International Paper	172	2000	105 Ton, 50'6" Plate F, 286,000 GRL, double door boxcars, manufactured by Trinity Industries.	MSCA 728225 - 728230 inclusive; 728232 - 728264 inclusive, 728266 - 728296 inclusive, 728298 - 728399 inclusive,	None
2	BC Rail Partnership	47	1996	73' 110 Ton, 286,000 GRL, Centerbeam lumber flatcars, manufactured by National Steel Car Manufacturing.	BCOL 873600-873614, inclusive; 873616-873634, inclusive; 873636-873639, inclusive; and 873641-873649, inclusive.	None.
3	Union Pacific Railroad Company	385	1996	111 Ton, 286,000 GRL, 5,161 CF Grain covered hopper railcars, manufactured by Trinity Industries.	FLIX 3500, 3501, 3503, 3505-3550, inclusive; 3552-3613, inclusive; 3615-3724, inclusive; 3726-3768, inclusive; 3770-3856, inclusive; 3858-3864, inclusive; 3866-3873, inclusive; 3875-3897, inclusive; and 3899.	FLIX 3573, 3662, 3820, 3856, 3866

Lease #	Lessee	# of Units	Year Built/ Manufacturer	Description	Reporting Marks	Casualty Marks
4	The Burlington Northern and Santa Fe Railway Company	347	1999	4,300 CF, 286,000 GRL Aluminum coal hopper railcars, manufactured by Johnstown America.	CEFX 60360-60719, inclusive.	CEFX 60373, 60382, 60433, 60520, 60527, 60588, 60602, 60617, 60630, 60631, 60648, 60660, 60685
5	Wisconsin Public Service	119	1999	Aluminum BethGon™ Coalporter railcars manufactured by Johnstown America Corporation.	WPSX 8001 - 8119 inclusive.	None.
6	Off lease	104	1990	4270 CF aluminum gondola railcars manufactured by Thrall Car Manufacturing Company	EXEX 640000- 640031; 640033- 640068; 640070- 640106; 640108- 640109 (formerly marked CWEX)	None.

1. Master Net Railcar Lease dated as of November 1, 2005, and effective as of July 1, 2005, between Babcock & Brown Rail Leasing Co. and International Paper Company.

Schedule No. 01 to Master Net Railcar Lease dated as of November 1, 2005, and effective as of July 1, 2005, entered into by and between North America Rail Leasing #3 LLC (d/b/a Babcock & Brown Rail Leasing) and International Paper Company.

2. Master Railcar Lease made as of July 16, 1998, between The CIT Group/Equipment Financing, Inc. and BC Rail Partnership.

Rider No. 01 to Master Railcar Lease made as of July 16, 1998, between The CIT Group/Equipment Financing, Inc. and BC Rail Partnership.

3. Master Lease Agreement dated as of December 15, 2004, and effective as of August 1, 2004, between Babcock & Brown Rail Leasing Co. and Union Pacific Railroad Company.

Rider No. 05 to dated as of September 9, 2005, and effective as of October 1, 2005, between North America Rail Leasing #3 LLC (d/b/a Babcock & Brown Rail Leasing) and Union Pacific Railroad Company.

4. Master Net Railcar Lease made as of April 5, 2001, and effective as of April 27, 1999, between The CIT Group/Equipment Financing, Inc. and The Burlington Northern and Santa Fe Railway Company.

Schedule No. 01 to Master Net Railcar Lease made as of April 5, 2001, and effective as of April 27, 1999, entered into by and between The CIT Group/Equipment Financing, Inc. and The Burlington Northern and Santa Fe Railway Company.

5. Master Railcar Lease is made as of June 25, 2004 between The Clearwater Partnership LLP and Wisconsin Public Service Corporation.

Schedule No 01 to Master Railcar Lease is made as of June 25, 2004 between The Clearwater Partnership LLP and Wisconsin Public Service Corporation.

Lease Extension Agreement No. 01 is entered into as of May 2, 2005, and is effective as of July 1, 2005 between North American Rail Leasing #3 LLC (as ultimate assignee of The Clearwater Partnership LLP) and Wisconsin Public Service Corporation.